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# **The Federal Advisory Committee Act (FACA):**

## **An Overview\***

**Presented By: John Higley, SPAWAR Code 00C  
OT-4, Rm. 1128  
619-524-7042**

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# FACA (continued)

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- **INTRODUCTION**

- **The Federal Advisory Committee Act (FACA) was enacted in 1972 to control the growth and operation of the "numerous committees, board, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government." 5 U.S.C. App. 1, § 2(a).**

# FACA (continued)

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- ***“Advisory committees have played an important role in shaping programs and policies of the Federal Government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse.”***

# FACA (continued)

- **Through enactment of the Federal Advisory Committee Act (FACA) of 1972 (Public Law 92-463), the U.S. Congress formally recognized the merits of seeking the advice and assistance of our Nation's citizens. At the same time, the Congress also sought to assure that advisory committees:**
  - **Provide advice that is relevant, objective, and open to the public;**
  - **Act promptly to complete their work; and**
  - **Comply with reasonable cost controls and recordkeeping requirements.**

# FACA (continued)

- **Act Is Administered in the Executive Branch By:**
  - **U.S. General Services Administration**
    - **Office of Governmentwide Policy**
    - **Committee Management Secretariat, Washington, DC 20405**
    - **As part of its responsibility under FACA, GSA issues government-wide guidelines and regulations for Federal Advisory Committee Management**
  - **OMB - OMB Circular A-135, dated 10/05/94, Management of Federal Advisory Committees**
  - **DoD - OSD, Organizational & Mgmt Planning**
  - **DoN - DoN Mgmt Program FAC Mgmt Program**



# FACA (continued)

- **GSA / DoD / DoN Implementing Instructions:**
  - **GSA's Final Rule, The 2001 Federal Advisory Committee Act, 41 CFR Parts 101-6 and 102-3, [Fed. Register: July 19, 2001 (Volume 66, No. 139), pages 37727-377750] <<http://www.gsa.gov/Portal/pub.jsp?detail=longDesc&OID=117086>>, [POC is Chuck Howton, Dep Dir, Cmte Mgmt Secretariat, (202) 273-3561 or email at [charles.howton@gsa.gov](mailto:charles.howton@gsa.gov)]**
  - **DoD Directive 5105.4, DoD Fed Advisory Cmte Mgmt Program (5 Sep 89) [POC: Jennifer Spaeth, Mgmt. Analyst, OSD, Organ'l and Mgmt Planning, (703) 695-4281]**
  - **SECNAVINST 5420.60H, DoN Mgmt Program Fed Advisory Cmte Mgmt Program [POC: Laura Wurzer, DoN, (703) 693-0934]**
  - **SECNAVINST 5420.194, DoN Cmte Mgmt Program, (12 Oct 99)**

# FACA (continued)

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- **Role of Federal Advisory Committees**
  - **With the expertise from advisory committee members, Federal officials and the Nation have access to information and advice on a broad range of issues affecting Federal policies and programs. The public, in return, is afforded an opportunity to participate actively in the Federal Government's decisionmaking process.**

# FACA (continued)

- **Federal Agency (DoD/DoN) Responsibility:**
  - **Each Federal agency that sponsors advisory committees must adhere to the requirements established by the FACA, as well as those administrative guidelines provided by the U.S. General Services Administration's (GSA) Committee Management Secretariat. GSA has had the responsibility for overseeing the FACA since 1977.**





# FACA (continued)

- **Complying with FACA**

- ***Practice Tip: “Any meeting initiated by one or more Federal officials with more than one individual [to obtain] the advice of individual attendees and not for the purpose of utilizing the group to get consensus advice or recommendations”***

**is permissible and falls outside the purview of the Federal Advisory Committee Act (FACA). Para 4.3.6, DoD Directive 5105.4.**

- **Any advisory group, with limited exceptions, that is established or utilized by a Federal agency and that has at least one member who is not a Federal employee, must comply with the FACA.**
- **To find out if a group comes under the FACA, contact SPAWAR Office of Counsel, 619/524-7042/43, or the DoN's / DoD's Committee Management Officer, (Laura Wurzer, DoN, (703) 693-0934; Jennifer Spaeth, OSD, (703) 695-4281); or the GSA Committee Management Secretariat (Chuck Howton, Dep Dir., (202) 273-3561).**

# FACA (continued)

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- **Requirements for Establishing and Managing Advisory Committees**
  - **Under the FACA, advisory committees can be created only when they are essential to the performance of a duty or responsibility conveyed upon the Executive Branch by law.**
  - **Before committees can be set up, high-level officials within the sponsoring agency must review and approve the request.**

# FACA (continued)

- **Requirements for Establishing and Managing Advisory Committees (cntd)**
  - **Once a committee is approved, a charter is prepared outlining the committee's mission and specific duties and forwarded thru DoN/DoD to GSA's Committee Management Secretariat for final review.**
  - **Following a required public notification period, and the filing of the charter with Congress, the committee may begin operation.**
  - **In DoD, all non-federal committee members have to be processed as consultants and special government employees.**

# FACA (continued)

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- **Committee Management Officer and Designated Federal Official**
  - **The Federal Advisory Committee Act also provides that each agency sponsoring a Federal advisory committee must appoint a Committee Management Officer to oversee the administration of the Act's requirements.**

# FACA (continued)

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**In addition, a Designated Federal Official must be assigned to each committee to:**

- Call, attend, and adjourn committee meetings;**
- Approve agendas;**
- Maintain required records on costs and membership;**
- Ensure efficient operations;**
- Maintain records for availability to the public;**
- Provide copies of committee reports to Committee Management Officer for forwarding to the Library of Congress.**

# FACA (continued)

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- **Advisory Committee Members**

- **The FACA requires that committee memberships be "fairly balanced in terms of the points of view represented and the functions to be performed."**
- **As a result, members of specific committees often have both the expertise and professional skills that parallel the program responsibilities of their sponsoring agencies. In balancing committee memberships, agencies are expected to assure that major-and sometimes strongly opposing-viewpoints are represented to provide a foundation for developing advice and recommendations that are fair and comprehensive.**

# FACA (continued)

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- **Appointing Committee Members**

- **Agency officials, Members of Congress, the general public, or professional societies or current and former committee members may nominate potential candidates for membership.**
- **Selection of committee members is made based on the FACA's requirements and the potential member's background and qualifications. Final selection is made by the President or heads of agencies.**
- **Prior to accepting an appointment with a Federal advisory committee, each prospective member should meet with the appropriate agency Committee Management Officer and Designated Agency Ethics Official, to discuss duties and obligations, allowable expenses, and compensation limitations.**



# FACA (continued)

- **Federal Ethics and Conflict of Interest Laws:**
  - **Agency officials must provide prospective advisory committee members with information regarding any applicable standards of conduct-including those imposed by Federal conflict of interest statutes. In some instances, members may be subject to special limitations during the course of their service on an advisory committee. For some members, these restrictions also may apply (for limited periods) after their committee assignments have ended.**
  - **Some agencies may impose additional administrative requirements as well. To avoid potential conflicts, each advisory committee member should assure that he or she receives adequate information from the sponsoring agency and completes any required appointment papers and disclosure forms prior to service on a committee.**



# FACA (continued)

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- **Federal Ethics and Conflict of Interest Laws (cntd):**
  - **Oral briefings and other explanatory material may be obtained through the sponsoring agency's Committee Management Officer, Designated Agency Ethics Official, or from the Office of Government Ethics, which has government-wide jurisdiction on Federal ethics issues.**

# FACA (continued)

- **Open Access to Committee Meetings and Operations:**
  - **Under the provisions of the Federal Advisory Committee Act, Federal agencies sponsoring advisory committees must:**
    - **Arrange meetings for reasonably accessible and convenient locations and times;**
    - **Publish adequate advance notice of meetings in the Federal Register;**
    - **Open advisory committee meetings to the public (with some exceptions - see the section on "Government in the Sunshine Act" below);**
    - **Make available for public inspection, subject to the Freedom of Information Act, papers and records, including detailed minutes of each meeting; and**
    - **Maintain records of expenditures.**

# FACA (continued)

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- **Government in the Sunshine Act**
  - **Advisory committee meetings may be closed or partially closed to the public based upon provisions of the Government in the Sunshine Act of 1976 (Public Law 94-409). Examples of meetings that may be closed under the FACA are:**
    - **Those including discussions of classified information;**
    - **Reviews of proprietary data submitted in support of Federal grant applications; and**
    - **Deliberations involving considerations of personnel privacy.**

# FACA (continued)

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- **Government in the Sunshine Act**

(cntd)

- Today, an average of 1,000 advisory committees with more than 40,000 members advise the President and the Executive Branch on such issues as the disposal of high-level nuclear waste, the depletion of atmospheric ozone, the national fight against Acquired Immune Deficiency Syndrome (AIDS), and on efforts to rid the Nation of illegal drugs or to improve schools, highways, and housing, and on other major programs.



# FACA (continued)

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## FACA NOT APPLICABLE-

## CONTRACTOR SCENARIO

- **Question: *Is the Act applicable to meetings between agency officials and their contractors, licensees, or other “private sector program partners?”***

# FACA (continued)

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- ***Answer: No. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract's solicitation, issuance, and implementation, or an agency's efforts to ensure compliance with its regulations. Such interactions are not subject to the Act because these groups are not "established" or "utilized" for the purpose of obtaining advice or recommendations. \*\****

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**\*\*Final Rule, FACA, 66 Fed. Reg. 139 (19 Jul 01), pg 37736, App. A to Subpart A of Part 102-3, Key Point I; 41 CFR Parts 101-6, 102-3;**

**<<http://www.gsa.gov/Portal/pub.jsp?detail=longDesc&OID=117086>>**

# FACA (continued)

- **ILLUSTRATIVE SCENARIOS**

***The following slides contain scenarios which illustrate when FACA does and does not apply to interactions between Executive branch officials and the private sector.***

# FACA (continued)

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- **SCENARIO ONE - FACA NOT APPLICABLE**
    - **Factual Assumptions:** As part of continuing National Performance Review (NPR) initiatives, the Administrator wishes a series of meetings with senior corporate executives from companies which have faced or are facing challenges similar to those facing Government today, e.g., downsizing, restructuring, reduced resources, creative financing needs, labor and human resources concerns, increased customer relations demands, etc.
    - The Administrator's intent is to obtain experiential and anecdotal information from each executive on challenges faced by his/her company, how the company met the challenges, approaches which were productive or successful, and those which were not. The attendees may or may not change from session to session.



# FACA (continued)

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## SCENARIO ONE - FACA NOT APPLICABLE (cntd)

- The specific agenda subjects will likely change and may be set in advance or be free form. No consensus advice or recommendations resulting from group deliberation or interaction is expected or will be solicited.
- **FACA does not apply because:**
  - The intent is to obtain information or viewpoints from individual attendees as opposed to advice, opinions or recommendations from the group acting in a collective mode.

# FACA (continued)

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## SCENARIO ONE - FACA NOT APPLICABLE (cntd)

- **FACA coverage could become an issue if:**
  - **The function / mission of the group changes over time and the Administrator begins to use the group as a source of consensus advice or recommendations. The more static the group composition, i.e., the same attendees at each meeting, the more likely an issue of FACA's applicability will arise.**

# FACA (continued)

- **SCENARIO TWO - FACA APPLICABLE**
  - **Factual Assumptions:** Same fact pattern as described in paragraph 1 of Scenario One except rather than seeking information on individual corporate experiences the Administrator prefers to establish a committee composed of senior corporate officials which will meet, interact, deliberate, and advise him on a variety of issues arising out of the NPR. The committee structure could include a core membership with subgroups.

# FACA (continued)

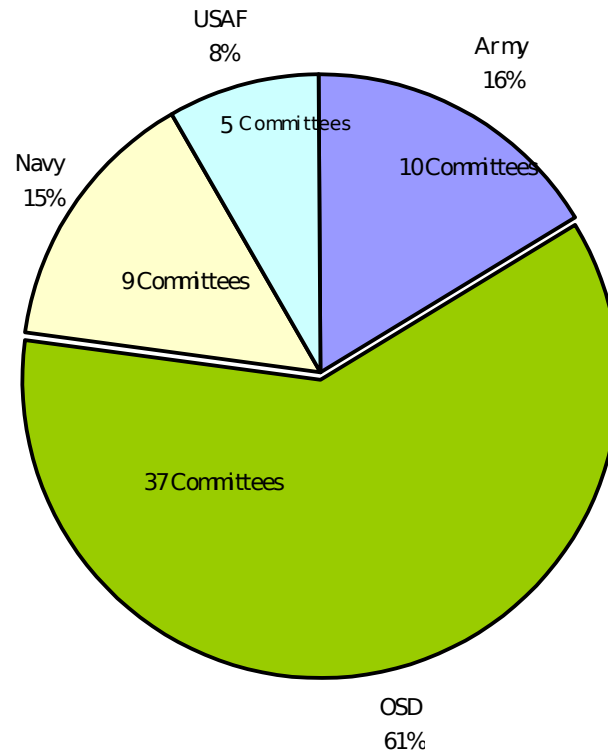
- **SCENARIO TWO - FACA APPLICABLE (cntd)**
  - The committee is established by an agency head (the Administrator) to obtain advice or recommendations for himself or other Federal officers in the executive branch; and
  - **FACA applies because:**
    - The committee is not composed wholly of full-time, or permanent part-time Federal employees.

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\* **Source of Slide Material: GSA's Office of Governmentwide Policy, Committee Management Secretariat, "The FACA Brochure," at <<http://www.gsa.gov/Portal/pub.jsp?detail=longDesc&OID=115416>>**

# FACA (continued)

## Number of DOD Federal Advisory Committees



# FACA (continued)

## DOD Federal Advisory Committees FY 2001

